



City of Seattle

Mike McGinn, Mayor

Seattle Human Rights Commission

October 21, 2013

David G. Jones, City Auditor
Virginia Garcia, Auditor-In-Charge
Mary Denzel, Supervising Auditor
City of Seattle Auditor's Office
700 5th Ave, Suite 2410
Seattle, WA 98104

RE: Review of City of Seattle's Civil Rights Enforcement Process, October 2013

Dear Mr. Jones, Ms. Garcia and Ms. Denzel:

Thank you for the opportunity to comment on the Review of City of Seattle's Civil Rights Enforcement Process dated October 2013. The Human Rights Commission greatly appreciates the time your office gave us during the review process.

The Review makes a number of recommendations concerning objectivity and impartiality, efficiency, and training. We will address each recommendation in that order.

Objectivity and Impartiality: Recommendations 6 and 7

First and foremost, the Human Rights Commission is pleased the Review confirmed that the Commission is executing its appellate duties impartially and objectively. The Commission places paramount importance on its statutory obligation to serve as a neutral appellate body and takes satisfaction in the evidence that it is conducting appeals objectively and impartially.

As to the theoretical question posed by Council as to which appellate model would universally be perceived as the most impartial and objective, the Commission does not disagree that it is the quasi-judicial model. While the Commission currently follows the norms of a quasi-judicial body by prohibiting ex parte contacts and communications, requiring recusal in cases of a potential conflict of interest, and, with the advice and counsel of the City Attorney's Office, reviewing the record for legal error, it is structurally a hybrid. For some, a hybrid model, even as notably independent as the Seattle Human Rights Commission where the Commission is external to the enforcement agency and, as the Review finds, "... can rule on cases independently . . .", such a model is per se incapable of operating impartially and objectively. For this tiny minority, a hybrid

structure will always be philosophically objectionable no matter the evidence that it is in fact objective and impartial.

Interestingly, none of the human rights commissions examined in the Review, commissions specifically chosen for their comparability to the Seattle Human Rights Commission, utilizes a quasi-judicial model. All of the comparable jurisdictions examined utilize a hybrid structure of an advisory, educational and appellate body. The hybrid structure of the Seattle Human Rights Commission is the norm.

Similarly, none of the comparable jurisdictions create in-house quasi-judicial bodies by segregating their appeal panel members from the advisory work of the commission. Such segregation would be counter-productive because the workload of effective commissions requires the full participation of each commissioner. Additionally, the experience of reviewing appeals informs the advisory work of human rights commissions which are tasked with advising policymakers on how to improve the laws they pass.

Regarding the makeup of the commissions, only one of the six comparable commissions - Tacoma, Washington - mandates a self-identified business representative. As the statutory mandate of the Seattle Human Rights Commission is to advise the City on the promotion of human rights and solutions to discrimination, the criteria for appointment is demonstrated experience in human rights work and Board or Commission service. Anyone with such experience, irrespective of professional identity, is welcome to serve on the Commission. The Commission does have a dedicated youth seat through the Mayor's Office Get Engaged program. Currently serving on the Commission are two small business owners (one a restaurant owner), a landlord, and a representative of a Fortune 500 company.

As pointed out in the Review, a unique feature of the appellate process in Seattle is the right of the Commission to elect in its discretion to participate in the hearing process when private actor reasonable cause cases (discrimination is found) are referred to the Hearing Examiner. (In cases involving a City department, the Commission alone hears the reasonable cause appeal.) As a result of SOCR's high settlement rate, the Hearing Examiner has heard only one such case in the past five years. For reasons currently unknown, the Commission did not participate in this hearing. It is unclear how eliminating the right of the Commission to participate in the Hearing Examiner process would address "concerns" of the Seattle Metropolitan Chamber of Commerce or the Rental Housing Association of Washington when the Commission wasn't a participant in the one hearing heard by the Hearing Examiner in the past five years.

The value of retaining the right of the Commission to participate in Hearing Examiner cases is the opportunity to supplement the Hearing Examiner's adjudicative experience with the civil rights subject matter expertise of the Commission. The civil rights expertise of the Commission benefits both respondents and complainants. Rather than revoking the right of the Commission to participate, the municipal code might be amended to provide that one of its Co-Chairs and the Appeals Panel Chair, who is required to be an attorney, represent the Commission. This would address any concerns about the qualifications of the Commissioners to serve in such an adjudicative capacity.

Efficiency: Recommendations 10, 11, 12 and 13

The Review notes that out of the six comparable jurisdictions examined, Seattle has the highest appeal rate. This higher rate is attributed to the broader standard of appellate review in Seattle. The Review suggests that narrowing the basis of review will reduce the number of appeals. However, only two out of the six jurisdictions that have fewer appeals than Seattle have more restrictive grounds for appeal. The reason for Seattle's higher rate of appeals is unclear and not simply explained by a broader standard of appellate review.

Narrowing the basis for appellate review as suggested in the Review would compromise the rights of complainants contrary to the Statement of Legislative Intent. The majority of complainants, unlike respondents, are not represented by counsel and are not sophisticated or skilled self advocates. Restricting appeals only to cases where there is new evidence or where the evidence not considered would change the outcome requires the complainant to understand the legal standard in his or her case in order to articulate why the outcome would be different. Curtailing the right of redress in a city that is a leader in the advancement of civil and human rights on the off chance that it will reduce the number of appeals (there is no established correlation between the standard of review and the number of appeals) is an unwarranted step backwards.

As well as having the highest appeal rate out of the six comparable jurisdictions, Seattle also has the highest remand rate. Again, the Review attributes this to Seattle's broad standard of review, and again, only two out of the six comparable jurisdictions have a more restrictive appellate standard. Seattle and Maryland County share the same standard of review, but Maryland has a process in place that effectively eliminates "informational" remands – remands made solely because of questions about the investigation. The Commission is currently working with SOCR and the City Attorney's Office to implement a similar process and believes this will significantly reduce the number of remands.

The Commission is also investigating ways to ensure greater consistency in the appeals panel composition as a way of reducing remands.

As with appeals, narrowing the basis for remands when there is no established correlation between the number of remands and the standard of review, and when alternative measures are available to address unnecessary remands, is an unwarranted step backwards.

Requiring the SOCR Director and the Commission Chair to screen appeals seems an unnecessary bureaucratic step that will only slow down the appellate process.

Training: Recommendations 14 and 15

The Commission supports the Review's training recommendations.

Thank you again for the opportunity to respond to the Review of City of Seattle's Civil Rights Enforcement Process dated October 2013.

Most sincerely,

A handwritten signature in blue ink, appearing to read "Catherine Moore".

Co-Chair Seattle Human Rights Commission

A handwritten signature in blue ink, appearing to read "Marsha Mavunkel".

Co-Chair Seattle Human Rights Commission

Marsha Mavunkel

Chair Seattle Human Rights Commission Appeals Panel